

VZCZCXRO3313
PP RUEHBZ RUEH DU RUEHMR RUEHPA RUEHRN RUEHTRO
DE RUEHLG #0020/01 0081038
ZNY CCCCC ZZH
P 081038Z JAN 10
FM AMEMBASSY LILONGWE
TO RUEHC/SECSTATE WASHDC PRIORITY 0220
INFO RUEHZO/AFRICAN UNION COLLECTIVE PRIORITY
RHEHNSC/NSC WASHDC PRIORITY

C O N F I D E N T I A L SECTION 01 OF 02 LILONGWE 000020

SIPDIS

E.O. 12958: DECL: 01/09/2020

TAGS: [PHUM](#) [PGOV](#) [MI](#)

SUBJECT: MALAWI: SAME-SEX COUPLE ARREST UPDATE

REF: 09 LILONGWE 723

Classified By: Ambassador Peter W. Bodde, reasons 1.4 (b) and (d).

SUMMARY

1. (C) The trial of a Malawian same-sex couple charged with gross indecency is scheduled to start January 11. International interest in the story is growing. Malawian public reaction to news of the arrest has been extensive and generally supportive of the criminalization of homosexuality, reflecting the conservative nature of Malawi society. The Justice Minister told the Ambassador the GOM may be open to revising the law that makes homosexuality a crime, but public sentiment may discourage GOM initiative on this issue. U.S. engagement with the GOM will be most effective if it is part of a broad, continent-wide effort to encourage countries to de-criminalize homosexuality and prevent discrimination. End Summary.

TRIAL BEGINS JAN. 11

2. (U) The trial of the same sex couple Tiwonge Chimbalanga (AKA Stoneck Kachera) and Steven Monjeza (aka Steven Soko) (reftel) is scheduled to start January 11. The couple was denied bail by the Blantyre Magistrate Court on January 4, and they remain in police custody. While there has been no threat of violence, the Magistrate cited the need to hold the two "for their own safety." The Malawi press reported that the couple underwent a psychiatric exam to determine their competency and a physical exam to determine if the two have engaged in sexual activity. Malawi Police Service public relations officer Beatrice Mwachande said the results of the tests would be offered as evidence in the trial. The judge indicated that he will address the bail request again on January 11.

3. (U) International interest in the trial has grown. Amnesty International issued a call for the release of the accused couple. Post has heard that major U.S. and other international news organizations will send correspondents to cover the story.

CRIMINALIZATION UNCONSTITUTIONAL?

4. (C) The two defendants were charged with violating Malawi Penal Code Chapter 15 - Offences Against Morality, Sections 153 and 156. Section 153 refers to "carnal knowledge against the order of nature," violation of which is a felony punishable by up to 15 years. Section 156 refers to "any act of gross indecency" committed by any male with another male, violation of which is a felony punishable by up to five years. These laws date from the early 1900's during Malawi's colonial period. At independence in 1963, Malawi adopted almost the entire penal code in effect at the time. It has been amended only rarely in the intervening 46 years.

University of Malawi Dean of Law Dr. Edge Kanyongolo (protect) told us that from a purely legal perspective, "carnal knowledge" would be difficult to prove. However, Kanyongolo suggested it is likely that the two will not be granted bail, and that they will be convicted. He also noted that, in his opinion, Sections 153 and 156 are in direct conflict with the human rights and broad freedoms enshrined in Chapter 4 of Malawi's constitution. Kanyongolo believed a guilty verdict would likely be appealed on constitutional grounds. A ruling from Malawi's Constitutional Court could take a year or more. In the meantime, the defendants would likely request bail pending the outcome of such an appeal.

CHURCHES, PUBLIC OPPOSE GAY RIGHTS

¶5. (SBU) In the wake of Chimbalanga and Monjeza's wedding ceremony and subsequent arrest, public reaction in the press has been extensive and largely supportive of criminalization of homosexual acts. Malawi religious leaders have weighed in strongly against the couple, calling for their conviction. President of the Seventh Day Adventist Church Pastor Sausten Mfuno cautioned the country's leadership "not to buy arguments of those supporting homosexuality on the premise of respecting people's rights." Public support for Chimbalanga and Monjeza has been sparse in comparison.

CONFLICTING SIGNALS FROM THE GOM

¶6. (C) Justice Minister Peter Mutharika (who is also the brother of President Mutharika and a respected constitutional

LILONGWE 00000020 002 OF 002

law professor at a U.S. university) told the Ambassador privately that senior GOM officials did not order the arrest of the two defendants. He added that the Government may be prepared to revise the law, saying "it seems that is the way the world is headed." He did not suggest that any change would come in time to affect the trial of Chimbalanga and Monjeza. Post also learned that the British High Commissioner to Malawi had also conveyed his country's concern about the case to the Justice Minister.

¶7. (SBU) In contrast to the Justice Minister's private remarks, Principal Secretary for HIV/AIDS in the Office of the President and Cabinet, Dr. Mary Shawa, stated publicly that "homosexuality is alien to Malawi, and illegal under the laws of the country."

COMMENT: NEXT STEPS / USG ENGAGEMENT

¶8. (C) Malawian society remains deeply conservative, at least on the surface. Organized religion remains the most important moral and social influence for most Malawians, and the fact that most Christian and Muslim denominations in Malawi condemn homosexuality is a key factor on this issue. In this sense, Malawian attitudes resemble those prevalent in much of the developed world several decades ago. The Justice Minister's apparent willingness to consider changing the law is encouraging, but the Mutharika administration will see little political upside to embracing what even many educated Malawians perceive as a "foreign" cause. Post will continue advocating greater respect for same-sex rights using broader human rights commitments as a basis, but even a concerted international push may not ultimately be enough to alter the direction of the Malawian justice system in the current case, or swiftly change Malawi's laws in this area.

¶9. (C) Malawi is not unique in Africa in its criminalization of homosexuality. A USG initiative to encourage revision of relevant Malawian law would be most effective if part of a broad effort that addresses the issue across the region. We are more likely to achieve progress if Malawi is not singled out just because of this particular test case. The African

Union might provide a useful forum for discussion of human rights and non-discrimination based on sexual preferences, particularly given that President Mutharika appears likely to assume the AU Presidency.

BODDE